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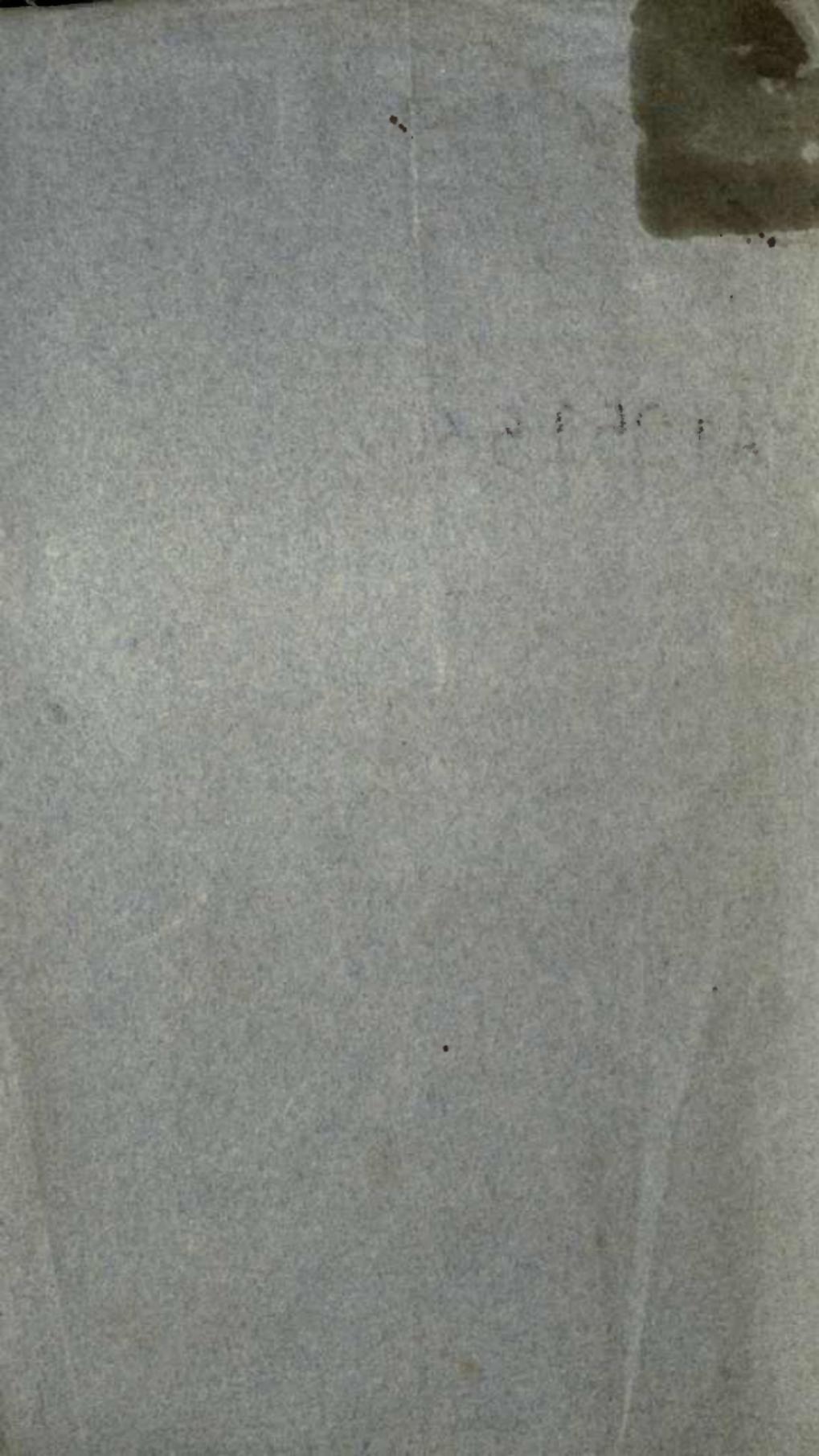
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# REMARKS

ON

SOME STRICTURES

LATELY PUBLISHED,

ENTITLED

OBSERVATIONS UPON THE STATUTE TIT. XIV.

DE VESTITU ET HABITU SCHOLASTICO :

WITH A BRIEF STATE OF THE CONTROVERSY  
WHICH GAVE OCCASION TO THEM.

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## R E M A R K S &amp;c.

**I**N Lent term last the Servitors of Christ-Church contrary to express statute and immemorial usage appeared in the academical habit of Foundationers. The Foundationers of several Colleges, who had hitherto conformed to their statutable habit, were justly offended at this singular innovation; and, having lost the distinction which the statute had given them, naturally looked out for a new one in the habit of a Bachelor. These sudden alterations attracted the notice of the Magistrate: the Hebdomadal Meeting took them into consideration, and recommended it to the Vice-Chancellor and Proctors "to put the statute in execution, and reduce both orders to their proper habit." A few days after, some members of the Hebdomadal Meeting proposed a different measure, which, after mature deliberation, was carried against the sense of the senior part of the Board by a small majority. The substance of this resolution was communicated to the Public in a

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printed paper, which, to prevent any mistake, I shall transcribe verbatim; it is as follows:

“ I. Clerks-*servientes*,<sup>1</sup> servitors whether  
“ exhibitioners or not, choristers, to wear  
“ scholars’ gowns and square caps without  
“ tufts.”

“ II. Clerks-*non-servientes*,<sup>2</sup> scholars, demys,  
“ postmasters, students of Christ-Church, un-  
“ dergraduate fellows, to wear scholars’ gowns,  
“ square caps and tufts.”

“ III. Bachelors to wear their present dress  
“ with the addition of the *epomis* or tippet.”

Several members of Convocation objected to these regulations; they affirmed that part of them were contrary to statute; and questioned the authority that enjoined them: they therefore made application to the Proctors to repress the innovations prescribed by this printed paper; “ to put the statute in execu-  
“ tion, and reduce foundationers and servitors  
“ to their proper habit.” The Proctors re-  
ported to the Hebdomadal Meeting that they  
had received such application: the observa-  
tion made thereupon by the Board, was  
“ that the printed paper referred to is not

<sup>1</sup> I have taken the liberty to insert these words, as being afterwards added to the printed paper by the hebdomadal meeting.

"considered as having the force of a statute." From this declaration it was reasonably concluded that the said paper was neither statute, nor an authoritative precept founded on statute, nor a repeal or suspension of statute : it was therefore no rule at all ; and the statute *de vestitu & habitu scholastico* remained in as full force as if such paper had never been written. The Junior Proctor together with all the Deputies who were then in the University issued out, *ex officio*, a Moneo or Programma declaring the sense of the statute and requiring obedience to it. This Moneo therefore, declaratory of statute and promulgated by competent authority, is a rule of action to the parties described therein so far as the subject matter extends ; and will continue to be such, till it is virtually revoked by another Moneo equally statutable and authentick. The last day of Lent Term an Undergraduate Foundationer appeared in the Proscholium of the Divinity School as a candidate for a Bachelor's degree in an irregular habit, which he was known to have worn ever since the publication of the Programma. The House thought proper to repel him from his degree : this transaction is supposed to have given occasion to THE OBSERVATIONS ; which we come now to consider.

The ingenious Author of these observations, having briefly explained the statute, and taken notice of it's universal and perpetual obligation, enumerates several deviations from the letter of it which the Governours of the University have long permitted to take place in the article of *Vestitus* or Common Apparel. He offers a candid plea for their connivance at these irregularities: I think his plea, so far as it is applicable, is satisfactory; only observing by the way, that to make us appear like "fanatical round heads" is very far from the letter and spirit of the statute and canon \* well considered and understood. For the truth of this observation I appeal to fact: the Heads of Houses, the Canons of Christ-Church, and feveral other Clergymen, do actually "habit themselves according to the precise mode prescribed by the statute;" some of the Lay members of the University, the Collectors, for instance, and gentlemen in mourning, frequently do the same: and yet I believe they were never pointed out as "fanatical or ridiculous."

The author proceeds to mention similar deviations from the statute in the *Habitus* or Academical Dress: he endeavours on the same

\* See Canon 74.

principle to justify these irregularities, — and also to recommend a new one. The chief irregularity he would justify is that of the Undergraduate Foundationer wearing a tuft, and his gown in the present form: the new one he would recommend is that of a Bateller and Servitor wearing the statutable habit of a Foundationer. The principle is “Decorum, or the expediency of departing from the letter of the statute in a matter of so variable a nature as habit or dress, in conformity to common usage and the fashion of the times; and thus better answering the true design and spirit of it, which was doubtless to make every class of Academics, in due order and gradation, respectable.” The Principle is Liberal: we will Suppose it Just: But it must, like every other plea urged in derogation of Written Law, be strictly taken and cautiously applied: for in truth, “Decorum, Propriety, “Conveniency,” and the like, are rules of interpretation very vague and indeterminate; and if ever they should be deemed sufficient, without very pressing and apparent reason, “to abrogate a positive statute,” they would soon reduce us to that undesirable state wherein they will be our only guides.

Now I would beg leave to ask, taking this Principle of Decorum in it's full extent, what is the objection to the statutable habit of the Foundationer? Is there any thing in it which on a comparison with any dress or habit out of the University would "expose us to the ridicule "of all the world?" Or which in reference to other academical habits sinks the wearer below his proper level? Does it not approach as near as it possibly can to that of the Bachelor? Or, if in neither of these views it appear unbecoming, has it contracted any stain by it's application? Has it not 'till within these two months been worn by gentlemen's sons, upon Foundations as respectable, without exception, as any in the University? Surely the Principle and the Statute are not at variance.

I would inquire upon the same grounds what is there so highly inconvenient in the modern statutable habit of the Batteller or Servitor? Is not his gown excepting the least possible variation the same as the Commoner's? and would not the proposed reform render his habit equal or superior to the Commoner's, and give the Commoner just ground to complain, and aspire to the Gentleman Commoner's &c. &c. &c. &c.? "But the cap is a mark

“of Servility which it is illiberal to continue ; the wearer does not appear like a Gentleman ; Humanity pleads against the statute.” If the objection be true, it is unanswerable : if the form of the cap render his situation less comfortable or respectable, I wish it were altered : although I humbly apprehend, that a little more condescension and countenance from his superiors at home would contribute in far greater proportion to his comfort and decent estimation, than any improvement in his public habit ; but if his superiors have not “Humanity” enough to treat him like a “Gentleman” within his own walls, in vain will he endeavour to appear like one abroad. However, if an alteration in this instance be expedient on the Principle above-mentioned, should it not on the same principle be as Small as possible ? for there is also a Decorum to be kept with our Statutes. If nothing is more certain than that the primary (if indeed not the only) distinction intended by statute in the undergraduate habit, was between the Foundationer’s and the Non-Foundationer’s, which distinction we have already lost in respect of the Cap, why should it be wantonly confounded in the Gown also, without any reason of expediency or decency

whatsoever, — indeed contrary to both? (At present I put Exhibitioner-Battellers out of the question.) Can any cause be assigned why the lowest class of Undergraduates Non-Foundationers shall, in preference to every other Non-Foundationer, and in common with Foundationers, wear the Gown of a Bachelor? and this in direct opposition not to the letter only but to the Spirit of the statute<sup>a</sup>? We shall surely make Decorum a *Felo-de-se*.

It may be asked, why does the Principle of Decorum operate so freely on the Statute *De Vestitu*, and not on that *De Habitu Academico*? why is a deviation from the written law so readily admitted in one case and so reluctantly in another? The reason is obvious. Ordinary Apparel is of a variable nature; we wear it in common with the rest of our countrymen; there is therefore a Standard to which we may be constantly referred, and from which if we differ extremely we may become ridiculous: though it is possible we may be too delicate even in this point. But in the Academical Habit the case is widely

<sup>a</sup> I will venture to suppose that there are not three gentlemen in the University who consider the statutes with any degree of attention, that think this innovation defensible on any principles whatsoever.

different ; it is Intended to distinguish us from the rest of the world, as well as from each other ; it has therefore no standard abroad to which it can be referred, or need to be accommodated ; if it be not at variance with itself, that is sufficient. There is indeed a general Decorum and Propriety which should be uniformly diffused over every part of it ; as that it be grave yet not sordid, that the graduate's habit have more dignity than the undergraduate's, and the like : but this, being once well ascertained, is of a permanent nature ; and the habit once adopted becomes moreover by constant usage and application inseparably connected with the idea it is to convey, and thus obtains an artificial advantage over any new one that can be suggested. The case is the same with other Regular or Official Habits, those of Peers, for instance, of Judges, or City Magistrates. They have their Effect from their singularity, and from the uniformity of their figure and application. A Judge is not expected to wear his Ordinary Apparel like his predecessors in the last century : but should he vary the Fashion of his Official Habit every spring, or change it, for the robes of a Duke, for instance, or an Alderman of London, upon every alteration in

the Ministry, his dress might indeed be “as ‘becoming as possible,’ but would soon cease to engage reverence. The Judge’s Cap is not very modern or graceful, but I believe no criminal ever received a ludicrous or unsuitable impression from it; nor did any sensible man ever find himself offended by it, or wish to see his Lordship put on a fashionable hat. Just so in the University: habits handed down to us from our ancestors, stampt with the venerable impress of law and duty, are as significant as words; but if they are to shift their meaning and acceptation continually, they will soon have none at all: it is an easy transition from a contempt of the sign to a contempt of the thing signified; and if young men are thus taught by their Seniors to interpret away the meaning of plain statutes by capricious principles of “Decorum, Common Consent, Propriety, Virtual Abrogation,” and the like, they will soon think meanly of the Authority that enjoins them, and of the Officers who are to put them in execution: (a consequence already verified in more instances than one<sup>a</sup>:) they will naturally be led

\* A Servitor the other day, during an examination in the natural philosophy school, had the assurance, after several other Indecorums, to place himself in the Vice-Chancellor’s seat: the Regent Masters could not reduce him to order without interrupting the examination, and offering to go for a Proctor.

to imagine, that if, in the opinion of sensible and ingenious men, *Statute Tit.* xiv. is by some invisible operation become a dead letter, *Statute Tit.* xv. may possibly be so too: that, if the Proctor is not to be obeyed in one exertion of statutable powers, he is not in another: that they have sworn obedience to statutes whose Sense and Obligation is equally uncertain; to which some Grave Casuist may every morning give a different Interpretation or subjoin a new *EPINOMIS*; referring them, not to their Domestic or Public Governours, to "the Heads of Colleges or to the House of Convocation, but to General Principles;" which are indeed the basis of every positive institution, but ought not, by an unnatural application, to be raised up as batteries against it. I do not mean to reflect upon the teachers: but I take the freedom to charge the Doctrine with it's proper consequences; and I believe I am not singular in my manner of deducing them.

THE Author of the observations seems to confine his views entirely to Christ-Church: if he thinks the Gentlemen whose opinions he is discussing act under any personal or collegiate prejudices, it may be safely affirmed that

he does not do them justice. The writer of these remarks can truly declare for his own part (what he knows to be equally true of many others) that he has a perfect respect for the Society, and a sincere friendship for several of it's members. It is not therefore his wish to make particular applications ; however, as the Author has set him the example, he doubts not he shall be candidly attended to if he takes the liberty of following it.

It is alledged "that Undergraduate Fellows, " and such as are considered to be of the same " rank, have worn tufts ; and that the Stu- " dents of Christ-Church have been generally " considered, and have a right to consider " themselves, to be of this rank."

Now this practice of Undergraduate Fellows being allowed on all hands to be " contrary to " statute as explained by implication and antient " usage," (which by the way is fully confirmed by Loggan's Delineations, to which as to authentic patterns we are justly referred,) it can be defended only on the principle of Decorum. Now what Indecorum can possibly result from Undergraduate Fellows wearing the same habit with Undergraduate Scholars, or what " notions of Conveniency, Pro- " priety, or Decency can virtually abrogate a

" plain statute" as to the words *Socii, Probatonarii*, and not as to the words next following in apposition, *Scholares, Capellani, &c*, it is really not easy to comprehend. It may be answered, the same notions that long since abrogated the statute as to *Commensales, Communarii*, but has not yet quite annulled it as to *Battellarii, Servientes*. I will take this opportunity of observing, that we are not bound to justify the errors of our predecessors, much less to follow them, nor indeed always to correct them; at least it will be candid to begin with Our Own. But I think, upon the principles we are supposed to have adopted, a reasonable account may be given of this matter. Non-foundingers are of various parentage, fortunes, and expectations; there is a decorum in giving precedence here to such as have claim to it abroad; different fortunes and expectations require different Sumptuary laws; and the attention paid by the statutes to Noblemen plainly shew they are not averse to such distinctions: now these considerations naturally lead to a Distinction in Habit. On the other hand, Foundationers are in birth and fortune for the most part near upon an equality; when it is otherwise it is by accident, and if a gentleman of family places his son

upon a foundation, he is understood to shew the greater respect to academic institutions ; to imagine he desired any partial infringement of them would surely be a very unhandsome return : they are all without distinction Eleemosynary ; they all in different proportions eat the bread of their Founder, only one has a firmer establishment in his family than another as his lot may happen ; and it seems to be no dictate of reason (nor of " humanity" if you will) that the less successful Candidate shall be marked out by a distinction of habit which the laws by which he is governed do not impose. Besides the difference is frequently only in name ; a perpetual Scholar, or one entitled to succeed to a Fellowship, has almost as firm an establishment as a perpetual Fellow. The prudence and moderation of our predecessors is remarkable in this instance : they suffered no distinction of habit to prevail among Foundationers : <sup>a</sup> they added <sup>b</sup> to the gown of some Non-Foundationers a limited number of ornamental buttons or tassels, to that of others a few more ; but the essential fashion ever remained entire : they

<sup>a</sup> See Loggan.

<sup>b</sup> See Minutes of the Hebdomadal Meetings in the Bodleian Library.

appear herein to have been neither slaves to the letter of their statutes, nor tyrants over the spirit of them ; but to have had a filial reverence for both. If this reasoning be just, it is of as little consequence to the Students of Christ-Church in respect of their habit as it is on other accounts, whether they be Fellows, or of like rank with Fellows. Indeed if the description given of them, had it been accurate, would have proved them to be Fellows, it would follow that half the Scholars in the University are so too ; and it were very easy to shew from the <sup>a</sup>antient as well as <sup>b</sup>modern idea of a *College* or *Society*, who are *Socii* and who are not. But it matters not what is their charter style or statutable denomination ; if they desire to be considered as Fellows, they pay a compliment to the Order, which it is presumed the Gentlemen of that order will not fail to return : they are certainly a Respectable Body ; and their Undergraduate Members have undoubtedly as good a claim to the ornament in question as any other Foundationer, who pleads no special dispensation or composition with the University.

<sup>a</sup> See Digests *passim* : particularly III. 4. 1. 1. XLVII. 22. 4.

<sup>b</sup> See College Statutes and Registers *passim*.

It is suggested that the Servitors of Christ-Church are Exhibitioners, and that Exhibitioners are Foundationers. Be it admitted that Exhibitioners are Foundationers: are All the Servitors of Christ-Church Exhibitioners? if not, why is the practice extended beyond the theory that is to support it? Besides, if all Exhibitioners are Foundationers, it will follow that as such, whether originally Servitors or Commoners, they are indispensably bound by Statute to wear the Foundationer's Habit: if therefore any Society prescribe this Habit to their Exhibitioner-Servitors and not to their Exhibitioner-Commoners, they act inconsistently with their own hypothesis, and infallibly expose one order or the other to the censure of the Magistrate. But in truth the learned Author of the observations needs not not to be told what constitutes a Foundationer; he knows that the Doctrine in dispute is novel and occasional; that the common style of an Exhibitor is that "he bequeathes "to the Dean and Chapter of A, or to the "Master and Fellows of B, or to the Skin- "ner's Company in London, two hundred "pounds in trust that 10*l.* *per annum* be paid "to a poor Commoner, Scholar, Bateller, to- "wards his better maintenance &c." thus de-

scribing his College-Rank, and leaving it as he found it ; that an Exhibition is tenable with a Fellowship in the same College ; that if this new doctrine prevailed, " the Bursar of a College might at a moderate expence endow in half an hour as many Scholarships, Chaplainships &c. as his pious and munificent Founder could do with ample revenues in his whole life ! "

BUT whatever may happen to be the sentiments of the Author of the observations, or of the Writer of these remarks, the matter in debate remains still undecided : the Students of Christ-Church and others have worn tufts for half a century ; Servitors whether Exhibitioners or not do wear Scholar's gowns and Square Caps without Tufts to-day, and may wear them with Tufts to-morrow ; Commoners affirmed to be on a foundation, wear the habit of those that are not on a foundation ; — and there are also Visible Foundationers or portions of a Body Corporate, where there is no Incorporation or visible or intelligible Foundation at all : and contrary opinions are maintained upon these subjects by members of the University respectable by their office, situation, and personal character. What then is to be done ?

THERE are two methods of deciding a controversy between different branches of the same Community: the one is by Reason and Argument, the other by a fair and honourable Exertion of the powers which the Community has vested in the parties respectively. The former is on all accounts more eligible; the latter, if the other has been tried in vain, and the case require and deserve it, is not only justifiable but commendable. If a Member of Convocation, who had a sincere regard for the honour and prosperity of this University, and was not totally unacquainted with it's statutes, customs, and true interests, were to enter into the present controversy, he would probably proceed in some such manner as this:

He would propose to the Gentlemen whose opinions he would wish to approve, — with sincere deference to office and station, but with that ingenuity and freedom which becomes a man of liberal education, — the following considerations. He would suppose, that a due distinction of habit is a matter of no small importance in every University: that the statutes of this University indispensably require it: that, on the most General Principles, that distinction demands our first attention, which marks the Honours that are con-

ceived to be the Rewards of Merit, and preserves in some degree visible those Great Lines of Separation which the Legislature has for this purpose chalked out before us: that such a distinction as this will lie between the Graduate and the Undergraduate, the Foundationer and the Non-Foundationer: that the more the Graduate is distinguished from the Undergraduate, the more will he command a reasonable deference and excite an useful emulation; and therefore he should, if possible, be distinguished, not only in his Official and more Solemn Ornaments, which are burthensome and ostentatious, and which therefore convenience and modesty are apt to remit and lay aside, but in his Ordinary and Standing Habit: that of all the habits which might answer these purposes, those would be most eligible which have the venerable sanction of Statute and Antient Usage; especially if decent in themselves, and well corresponding with others already settled: and lastly, that the *Toga talaris* *five non-manicata* of the Batteller, and the *Toga laxe-manicata* of the Foundationer, precisely answer this whole description. He would probably observe further, that to hold the Exhibitioner to be a Foundationer is at best a disputable doctrine, contrary to esta-

blished notions, tending indirectly to erase or weaken one of the great lines abovementioned, and productive of no good whatsoever; a position which probably owes it existence to the present controversy, and may perhaps fortunately die with it.

If he was heard with candor and attention, and answered with argument, he would be open to conviction. But if, on the other hand, the crude unstatutable regulations of one Domestic Governour should still be obtruded on the whole University, he would be apt to ask by what Authority they came recommended? If they claimed the sanction of the Hebdomadal Meeting, he would presume that no determination of that Respectable Board is intended to be a rule of public conduct, which is not authentically published and entered upon record: that if any resolution liable to just exception have happened to pass their assent, they have too much candour and moderation to refuse a Rehearing. He would even add (if necessary, not otherwise) that the Hebdomadal Meeting is indeed a very wise institution, but is of Modern Date: it can therefore claim no Powers by Prescription; the Letter of it's Charter is the invariable limit; and the Charter is in every body's hands. The

assertion might be supported by a great authority,<sup>a</sup> but the case would be too plain to require it.

If it were possible that he should not be attended to as a Reasonable Man, he would lastly consider himself as a Member of that Body which is in this place Supreme. He would probably attend the house of convocation; add one to the partial suffrages complained of by the Author of the observations; and Thus endeavour to vindicate the measure which he finds it necessary to adopt:

“ No violation of statute can possibly take place in this University, but by the connivance of every member thereof under whose cognizance the offending party must pass in the course of Academic Discipline. Every acting member has the Statute Book for his guide, to which he may appeal on all occasions, and the appeal must be admitted. If the Vice-Chancellor or Proctors observe an irregular habit, they will either of them respectively execute the statute so far as they see fit: each of the Deputy Proctors may do the same, for they are virtually admitted “ *ad Officium Procuratoris :* ” a Regent Master or other

<sup>a</sup> Mr Justice Blackstone.

Master of the Schools may deny an exercise to pass *pro formâ* in an irregular habit; and that even though he allows it in another, because he may possibly judge on equitable principles (be they “Decorum, Custom,” or any other) the latter to be pardonable and even expedient, the former to be neither: a master of the streets may in like manner reprove or cause to be punished Junior Scholars walking about idly in the streets *absque habitu sibi competente*, without any or with an irregular one it makes no difference; and he may, in case of contumacy, stop their Degrees. Lastly the House of Congregation, when the offending party solicits for his degree, and for dispensations which the statute permits them to grant, are the Judges of his past Academic Life: for this purpose they have besides their own observation, to which the statute has plainly an eye in describing the Members of Congregation, \* Testamurs, Attestation of the Dean, Scio's: the three latter tests are ordinarily sufficient; but not to the exclusion of the former. The house may fairly and equitably refuse Academic Honours to such as have knowingly violated in their judgment wholesome and expedient laws: they may refuse

\* Stat. ix. 1. 3, 6.

dispensations with still greater reason, as he who sollicits an indemnity for breach of Statute in some instances should be supposed to have been tolerably attentive to it in others. It appears then that the connivance of One Magistrate is no sanction for the violation of any statute : there are in this case several Concurrent Jurisdictions : the opinion of one is no rule to the other : if they happen to agree on an expedient measure, it is well : if not, any one of them may say, the Magistrate individually, the House by a Majority of Suffrages, *NOLUMUS LEGES ACADEMIÆ MUTARI, QUÆ HUC USQUE USITATÆ SUNT ET APPROBATÆ.* The Law will support them at all events ; and if they say it candidly, discreetly, and impartially, the rest of the University will do so too.

“ But is it not hard thus to punish a young man for wearing an irregular habit, after the custom of his College, which has obtained for half a century ? ” If it has obtained for half a century, it is high time to inquire by what right it has obtained. If by partial indulgence of successive Governors, the Undergraduate Foundationers of other Colleges have been injured by thus having their compeers raised above them contrary to com-

mon right: if by the connivance or permission of the acting Magistrate for the time being, it became the House as the dernier resort, to put an end to this unfair and partial distribution of Justice, and, like another Assembly of higher rank, to bring things to a regular account — by denying the supplies. The degree of punishment thus inflicted by the House for accumulated offences may perhaps be greater than the statutable punishment for one: but here it may be observed once for all, that the House must censure in the only way it can; not by inflicting penalties occasionally, which is the province of the Magistrate, but by refusing favours and honours, which is it's own. It takes no pleasure in acts of severity, but leaves those to answer for them who render them necessary. It is not material “what dispensation” is denied; if the House intends to refuse the degree, it properly enough prevents loss of time, by stopping the first step of the process.

“ But these are Partial severities.” The word “partial” had better surely been omitted. It reminds the most Candid Reader, Who long since began to assume partial favours; and now, by a Second violation of common right, have accidentally drawn down a censure on the

First. But in truth the Members of the last Congregation intended no partial censures or illiberal "Reprisals." They were determined to enter an Effectual Protest against the operation of an Ordinance (according to their judgment) inconvenient in it's matter, derogatory of statute, and passed by an incompetent jurisdiction. The only Candidate who came within the description of this Ordinance was a Student of Christ-Church, who had knowingly offended against the Statute *de vestitu & habitu* in disobedience to the Authoritative Injunction of the Magistrate. No plea of ignorance or inattention was offered, to extenuate the fault; nor of particular situation and circumstance, to suspend the censure. He appeared in his irregular habit; and was understood to make a public claim, under the Custom of his College or the Ordinance or Both, of exemption (in this instance) from Statute and Procuratorial Authority. His claim was rejected. If the proceedings of that day should be confirmed by future suffrages, the Foundationers of different Colleges will be put upon an equal footing; the leading distinctions prescribed by statute will be preserved; and every future accommodation or abrogation of statute,

wherever it takes it's rise, will be more deliberately considered, as it must eventually pass the assent of Convocation or Congregation.— As, happily, no Misconstruction of statute can oblige Either House to dispense their favours or their censures *pro arbitrio alterius*, they cannot be obstructed in the due execution of their office : they can, whenever they see it expedient, repress effectually every violation of statute, however ingeniously palliated or vigorously supported.”

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*John*